

GENERAL TERMS AND CONDITIONS OF PURCHASE OF MINOR WORKS

1. The Contract

- 1.1 These general terms and conditions and the Purchase Order together form the Contract (**Contract**) between the Council and the Contractor.
- 1.2 No other terms and conditions or other documents form part of the Contract unless expressly acknowledged and referred to. If any Special Conditions are specified in the Purchase Order, they form part of the Contract and prevail over the balance of the Contract to the extent of any inconsistency.
- 1.3 The Contractor agrees to supply the Works to the Council on the terms of this Contract.

2. Definitions

In this Contract:

- 2.1 **Authorisation** means all authorisations, licences, permits, consents, qualification and accreditation by or with a government agency;
- 2.2 **Completion** is the stage when the Works are complete and the fit for use by the Council for their intended use;
- 2.3 **Contractor** means the contractor named in the Purchase Order and includes its employees and agents;
- 2.4 **Council** means City of Playford and its employees and agents;
- 2.5 **GST** means goods & services tax pursuant to GST law;
- 2.6 **GST law** includes *A New Tax System (Goods and Services Tax) Act, 1999* and all associated legislation;
- 2.7 **Working Hours** means the hours for undertaking the Works as directed by the Council;
- 2.8 **Works** means the products supplied by the Contractor to the Council as set out in the Purchase Order;
- 2.9 **Liability Period** means the defects liability period specified in the Purchase Order;
- 2.10 **Site** means the site for the Works being the site specified in the Purchase Order, if any.

3. Application

This Contract:

- 3.1 applies to all Works undertaken or executed by the Contractor and the Contractor is deemed to have read and agreed to this Contract prior to filling any order for the Works; and
- 3.2 prevails over the Contractor's terms and conditions or any other documents provided by the Contractor.

4. Execution of Works

- 4.1 The Contractor must execute and complete the Works by the Completion Date specified in the Purchase Order and in accordance with this Contract.
- 4.2 The Contractor must in undertaking the Works:
 - (a) supply at the Contractor's expense all facilities and services required to execute the Works;
 - (b) comply with all directions of the Council; and
 - (c) comply with the requirements of all laws and any applicable Authorisation.

5. Access to Site

- 5.1 The Contractor will have access to the Site during the Working Hours in order to undertake the Works.
- 5.2 The Contractor must permit the Council to have full access to the Site at all times.

6. Warranties by the Contractor

- 6.1 The Contractor warrants that:
 - 6.1.1 in undertaking the Works, all materials used and the standard of workmanship is suitable for the purpose and consistent with the nature and character of the Works;
 - 6.1.2 all materials will be new;
 - 6.1.3 the Works will conform with the description and specifications in the Purchase Order; and
 - 6.1.4 during the Liability Period, the Works will operate and comply with the specifications supplied by the Council in respect of the Works, and otherwise in accordance with the operation of similar works.
- 6.2 If the Works (or any part thereof) are found to be defective or do not comply with clause 6.1 and the Council notifies the Contractor of such defect during the Liability Period or, if none is specified in the Purchase Order, within a reasonable time after the Works are completed the Contractor must, at its own costs, promptly repair the defect or replace the affected part (or the whole) of the Works within the Liability Period or, if none is specified in the Purchase Order, within a reasonable time.

7. Price Payable by the Council

- 7.1 The Council must, unless otherwise specified in the Payment Terms, pay the Contract Sum specified in the Purchase Order by electronic funds transfer within 30 days of the end of the month in which the invoice is issued, provided that the invoice is issued after full Completion of the Works.
- 7.2 The Council is entitled to set off or deduct from amounts otherwise payable to the Contractor any amount whatsoever due from the Contractor to the Council under any other contracts between the Council and the Contractor.
- 7.3 The Contractor must provide the Council with an invoice that complies with the GST law in relation to the Works.

8. Contractor Indemnities

The Contractor shall indemnify and keep indemnified the Council from and against all actions, proceedings, claims, demands, charges, penalties, expenses and all other liabilities of whatsoever nature arising from or in relation to the execution of the Works under this Contract.

9. Insurance

- 9.1 The Contractor must maintain at all times the insurances specified in the Purchase Order.
- 9.2 The Contractor must maintain the required insurances for not less than 6 years following delivery of the Works unless otherwise specified in the Purchase Order.

10. Disputes

All disputes or differences between the Council and the Contractor shall be referred to an arbitrator who shall be mutually agreed by the parties and in the absence of agreement, shall be appointed by the President of the Local Government Association of South Australia.

11. Termination

- 11.1 Without prejudice to any other rights, remedies or liabilities for prior breach or non-performance, the Contract may be terminated:
 - (a) by mutual agreement at any time and on any conditions required by the Council;
 - (b) on frustration of the Contract;
 - (c) on either party becoming bankrupt or insolvent (as defined by the *Corporations Act, 2001*);
 - (d) at any time by the Council giving 30 days' written notice to the Contractor in which case, in the absence of any breach by the Contractor, the Council will pay the Contractor for the Works provided to the date of that termination.
- 11.2 The Contractor must comply with the terms of any written notice given in accordance with clause 12.1.
- 11.3 The Contractor will not be entitled to compensation for loss of prospective profits.

12. Transfer or Assignment

The Contractor must not transfer or assign all or any part of this Contract without the prior written approval of the Council.

13. Force Majeure

If a party is unable, wholly or in part, by reason of an act of God or any other cause which is not reasonably within the control of the party affected (**force majeure**), to carry out any obligation under this Contract, that obligation is suspended so far as it is affected by force majeure during the continuance thereof provided that an obligation to pay money is never excused by force majeure.

14. General

- 14.1 In addition to any other method of service permitted by law notices shall be deemed to be properly served if sent to the recipient by prepaid post or email.
- 14.2 No waiver of, or any consent to any departure by either party from, a provision of this Contract is of any force or effect unless it is confirmed in writing, signed by the parties and then that waiver or consent is effective only to the extent to which it is made or given.
- 14.3 If any provision of this Contract is invalid and not enforceable in accordance with its terms, all other provisions which are capable of enforcement shall be and continue to be valid and enforceable in accordance with their terms.
- 14.4 This Contract is governed by the laws of the State of South Australia and the Contractor must comply with all laws applicable to this Contract, including the Occupational Health, Safety and Welfare Act 1986.
- 14.5 This Contract binds and ensures for the benefit of the parties and their respective successors, permitted assigns, administrators and personal representatives.